*T H E H O N ' B L E S R I J U

+WRIT PETITION Nos.16544 and 16549 of 2006

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WRIT PETITION No.16544 of 2006:

K. Srihari S/o late K.Rajaiah,
R/o N.4-1-765, Alampally Road,
Vikarabad, Ranga Reddy District.

..... PETITIONER

Vs.

$ The Municipal Council,
represented by its Chairperson,
Vikarabad, Ranga Reddy District and another.

.....RESPONDENTS

and

WRIT PETITION No.16549 of 2006:

Patel Shivagan S/o Patel Ladharam,
R/o H.No.4-1-746 (The Prabhat Saw Mill),
Alampally road, Vikarabad,
Ranga Reddy District.

..... PETITIONER

Vs.

$ The Municipal Council,
represented by its Chairperson,
Vikarabad, Ranga Reddy District and another.

.....RESPONDENTS

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! C o u n s e l S r i V i j a y K u m a r f o r P e t i t i o n

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? C A S E S R E F E R R E D : -

1. 1986 (1) (SN) APLJ 58
2. 2005(4) ALT 11

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION Nos.16544 and 16549 of 2006

Dated:29.09.2006

WRIT PETITION No.16544 of 2006:
Between:

K. Srihari S/o late K.Rajaiah,
R/o N.4-1-765, Alampally Road,
Vikarabad, Ranga Reddy District.

..... PETITIONER

And:

The Municipal Council,
represented by its Chairperson,
Vikarabad, Ranga Reddy District and another.

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WRIT PETITION No.16549 of 2006:
Between:

Patel Shivagan S/o Patel Ladharam,
R/o H.No.4-1-746 (The Prabhat Saw Mill),
Alampally road, Vikarabad,
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THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION Nos.16544 and 16549 of 2006

COMMON ORDER:

Heard Sri Rajesh Kumar, representing Sri Vijay Kumar Heroor, the learned counsel for the writ petitioners in both the writ petitions, and Sri Polisetti Radhakrishna, the learned counsel representing the respondents.

2. In these writ petitions notice before admission was ordered and interim direction was granted for a limited period, on 08.08.2006, and the same is being extended from time to time. In these writ petitions, the relief prayed for by the writ petitioners is for issuance of a Writ of Mandamus declaring the impugned orders passed by the respondents in the respective file numbers specified in the reliefs prayed for, as arbitrary and illegal. Inasmuch as the factual matrix being almost the same, both these writ petitions are being disposed of by this common order.

3. The respective petitioners had stated that the orders, which were made previously, had been questioned and ultimately statutory appeals under Section 345 of the A.P. Municipalities Act, 1965 (hereinafter referred to as “the Act”) had been preferred, but the first respondent had not taken up the appeals and had not passed any interim orders and in the light of the same, the respective petitioners approached this Court by way of writ

petitions and obtained an order of status quo. It is also stated that only when contempt cases are filed, with a view to circumvent and get over the said proceedings, the orders, which had been impugned, were passed. In substance, these are the respective stands taken by the writ petitioners in both these writ petitions.

4. This Court is not inclined to go into several of the factual details, which had been narrated in the affidavits filed in support of these writ petitions. Section 345 of the Act reads as hereunder:

" Section 345 of the A.P. Municipalities Act 1965.

(1) an appeal shall lie to the council from-

a) any notice issued or other action taken or proposed to be taken by the Chairperson, Commissioner, Municipal Health Officer or any other officer of the Municipality-

(i) under Sections 140, 150, 157 to 161 (both inclusive) Sub-Section (1) and (3) of Section 217, sub-section (3) of Section 228, sub-section (1) of Section 231, sub-section (1) of Section 232, sub-section (1) of Section 237 and Sections 239, 250, 261 and 262;

(ii) under any bye-law concerning house drainage and the connection of house drains with municipal drains or connections with municipal water supply or lighting mains; or

(b) any order of the Commissioner, Municipal Health Officer or any other officer of the Municipality granting or refusing a licence or permission; or

(c) any order of the Commissioner made under Section
212 refusing to approve the site for building, or under Sub-section (6) of Section 344 suspending or revoking a
licence; or

(d) any other order of the Commissioner, Municipal Health Officer or any other officer of the Municipality that may be made appealable by rules under Section 326.

(2) the decision of the council on an appeal referred to do it under Sub-Section (1) shall be final.

(3) An appeal under this section shall be presented and disposed of in the manner prescribed and no Court-fee shall be chargeable thereof.

5. Likewise, Rules 3,4 and 7 of the Andhra Pradesh Municipalities (Receipts and Disposal of Appeals) Rules, 1967, read as hereinunder:

"3. (1) Every appeal under Section-345 of the Act shall be presented in the form of a memorandum signed by the appellant or his pleader and shall be addressed to the Appellate authority and delivered at the municipal office during the office hours to the Chairman, Commissioner, Manager or any other person who may then be incharge of the office. The memorandum shall be accompanied by a copy of the order appealed against.

(2) The Chairman then will arrange for the convening of the meeting of the appellate authority as early as the circumstances warrant.

4. The memorandum shall set-forth concisely and under distinct heads of the grounds of objections to the other appealed against without any argument or narrative, and such grounds shall be numbered consecutively.

7. The appellate authority after hearing the parties or their pleader shall record its decision. Such decision may be for conforming, varying or reversing the order against which the appeal is preferred. It shall have power to make any order."

6. Further, the counsel for the writ petitioners in both these

writ petitions placed strong reliance on the decisions in ***P.Satyavathi v. Municipal Commissioner, Kothagudam,*** [1] ***and in Musunuru Rajani v. Vijayawada Municipal Corporation*** [2]***.***

7. It is needless to say that these decisions and the ratio laid down in these decisions also may be canvassed in these statutory appeals. At any rate, this Court is thoroughly satisfied that these impugned orders were not passed in accordance with the provisions of the Statute and the Rules made thereunder, referred to supra.

8. Hence, liberty is given to the respective writ petitioners to urge the grounds raised in these petitions and the grounds, which had already been raised in the statutory appeals, and also additional grounds, if any, inclusive of the decisions placed before this Court, before the appellate authority, if the petitioners are so advised. It is needless to say that the appellate authority to dispose of the appeals in accordance with law after affording reasonable opportunity of hearing to the writ petitioners.

9. In view of the same, the impugned orders are hereby set aside and the matters are remitted to the first respondent for hearing the appeals afresh, in the light of the observations referred to supra, and dispose of the same in accordance with law within a period of eight (8) weeks from the date of receipt of a copy of this order and till the appeals are disposed of in accordance with law, status quo obtaining as on today to be maintained.

10. The writ petitions are accordingly disposed of with the

above directions. There shall be no order as to costs.

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29.09.2006

Note: L.R.Copy to be marked.
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[1] ***1986 (1)(SN)*** APLJ 58

[2] **2005(4) ALT 11**